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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,023	10/10/2003	Mario J. Bravomalo	29471.4	3171
716	7590	10/28/2008		
COX SMITH MATTHEWS INCORPORATED 112 EAST PECAN STREET, SUITE 1800 SAN ANTONIO, TX 78205-1521				
			EXAMINER	
			PATEL, JAYESH A	
			ART UNIT	PAPER NUMBER
			2624	
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			10/28/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,023	BRAVOMALO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAYESH A. PATEL	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 August 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 51-74 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 51-53,55,58,59 and 67-74 is/are rejected.  
 7) Claim(s) 54,56 and 60-66 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 10 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 08/13/2008.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Aug 13 2008 has been entered.

### ***Claim Objections***

The claims status identifier shows all claims are “**new**”. The identifier should be “**previously presented**”. Please make the changes to the claims.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-72 and 73-74 are rejected under 35 USC 112.

Claims 51 and 73 recites the limitation "said regimen" and "said first image" in lines 6, 8 and 10 . There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 51-73 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled “Clarification of ‘Processes’ under 35 U.S.C. 101”). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. The examiner suggests amending the claims to incorporate an actual apparatus or device where the method is being performed in light of the specifications.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 51 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Crampton (US 7184047) hereafter Crampton as best understood by the examiner.

**51.** Regarding claim 51, Crampton discloses a method (**Fig 51 and 68**) for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person said first data set comprising a body shape designation (**obtaining data representative of a user's external appearance (body shape designation) at Col 55 lines 6-21 and 46-47, lines 16-18 and Col 51 lines 63 through Col 52 lines 18 where the outline data is utilized to define the maximum extent of the individual**),

creating a first image representative (**a reference geometry for an individual of the calculated height and body mass index from the image data captured at Col 49 lines 39-49**) of said person in a pre-regimen (**Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a pre-regimen**) condition by modifying a generic image (**a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21**) based on said first data set (**Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48**);

receiving a second data set (**weight data inputted by the user at Col 52 lines 14-18**) comprising at least one goal desired from said regimen (**effects of weight change as a result or dieting or loose weight at col 52 lines 16-18**); and creating a second image (**a computer model of the avatar being generated based on the simulated effects of weight and outline data at col 52 lines 1-18**) of the representative of said person in a post-regimen condition by modifying said first image based on said second data set (**avatar construction program utilizes the weight and the height data from the captured first image to calculate BMI and a new avatar is calculated based on the height and BMI calculated from the image at Col 49 lines 29-61, Col 51 lines 63 through Col 52 lines 18 and Col 55 lines 6-21**).

73. Regarding claim 73 see the explanation of claim 51 and Crampton also discloses calculating BMI which is an indication of relative Obesity (Fat ) of an individual and the vertices are moved (adjusted) based on the overweight individuals (**Col 49 lines 39-56 and Col 51 lines 67 through Col 52 lines 18**).

**Alternate rejections for the claims.**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-53, 55, 57-59, 67, 72-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa (US 20030108851) hereafter Posa in view of Crampton (US 7184047) hereafter Crampton as best understood by the examiner.

Regarding Claim 51, Posa discloses a method (**Figs 1 and 2**) for producing an image predictive of a person's appearance resulting from following a prescribed regimen, said method comprising:

receiving a first data set associated with said person; said first data set comprising a body shape designation (**measurements of body parameters such as waistline, body volume body weight representative of the body shape in page 1 Para 0005, the program assists the person to achieve the desired body shape based on the comparison of the difference in the body parameter and creating the image representative of the image difference**);

receiving a second data set comprising at least one goal desired from said regimen (**Page 1 Para 0010,0011 and Page 2 Para 0013, 0014 where the desired data set is entered by the client or person an the images are modified accordingly as seen in Fig 2.**);

creating a second image representative of said person in a post-regimen condition by modifying said first image based on said second data set (**Page 2 Paras 0013 to 0020**). Posa discloses that the remote server creates a stereoscopic representation of the person using the recorded images and allowing the stereoscopic images to be modified by the modified measurements at (**Page 2 Para 0017**), however do not disclose creating a first image representative of said person in a pre-regimen condition by modifying a generic image based on said first data set.

Crampton discloses creating a first image representative (**a reference geometry for an individual of the calculated height and body mass index from the image data captured at Col 49 lines 39-49**) of said person in a pre-regimen (**Col 49 lines 47 and 53 where relative obesity and overweight condition indicate a pre-regimen**) condition by modifying a generic image (**a reference male or female avatar at Col 49 lines 39-55, Col 55 lines 6-21**) based on said first data set (**Col 36 lines 67 through Col 37 lines 25, Col 49 lines 20-55 and Col 51 lines 63 through Col 52 lines 18, Col 55 lines 6-48**). Crampton discloses a method and program which creates computer models of individuals in different poses which is an improvement from the single pose generation which does not allow studying the internal structure (**Col 1 lines 21-59**). Crampton and Posa are from the same field of endeavor and are analogous art, therefore it would have been obvious for one of ordinary skill in the art at the

time the invention was made to have used the teachings of Crampton in the method and apparatus of Posa for the above reasons.

Regarding Claim 52, Posa and Crampton discloses the method of claim 51. Posa disclose the body shape designations (**measurements of body parameters such as waistline, body volume body weight representative of the body shape in page 1 Para 0005**) and is silent and however does not expressly disclose wherein said body shape designation is selected from pear-shaped (**top portion slim and middle part wide**), apple-shaped (**middle part of the body wide**), and straight-shaped (**skinny all the way like a skeleton**) of the individuals,

Crampton disclose said body shape designation is selected from (**transformation of stored avatar geometry to resemble calculated geometry of the user based on selection of different generic avatars stored representing adults, children, men and women or various shapes which forms the basis of generating the avatars at Col 55 lines 6-21 and 46-47**) and will be with in one of ordinary skill to select from the varieties such as pear-shaped, apple-shaped, and straight-shaped as claimed. The various shapes as disclosed by Crampton above would also include such shapes as claimed even though not expressly recited.

Regarding Claim 53, Posa and Crampton discloses the method of claim

51. Posa discloses further comprising calculating an ideal weight and an estimated body fat percentage for said person at (**Page1 Para 0005**).

Regarding Claim 55, Posa and Crampton discloses the method of claim 51. Posa further disclose wherein said creating a second image comprises calculation of an age factor (**Page 2 Para 0026 where the data collected is used in creating the image**). Crampton also discloses the age factor in claim 88.

Regarding Claim 57, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said at least one goal is selected from the group consisting of weight loss, muscle gain (**body building**), and a combination of weight loss and muscle gain at (**Page 1 Para 0001 and Para 0005**). Crampton also discloses the dieting and weight change and obesity in (**Col 49 lines 39-55 and Col 52 lines 1-18**).

Regarding Claim 58, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said regimen comprises at least one of the following: resistance exercise, cardiovascular exercise, nutrition planning, dietary supplement intake, and personal training at (**Page 1 Para 0010**). Crampton also discloses the dieting and weight change and obesity in (**Col 49 lines 39-55 and Col 52 lines 1-18**).

Regarding Claim 59, Posa and Crampton disclose the method of claim 51. Posa further disclose wherein said at least one goal comprises muscle gain and wherein said muscle gain (body building at Para 0001) is calculated based on at least one of the following factors: a base muscle gain factor; a supplement boost factor; a resistance compliance factor; an age factor; a nutrition factor (calorie intake); and a gender factor at (**Paras 0010, 0011, 0026 and 0029**) where age diet and gender are used for creating the images with respect to the muscle gain or (**body building**) program.

Regarding Claim 67, Posa and Crampton disclose the method of claim 53. Posa further disclose comprising recalculating said body fat percentage to account for fat loss or muscle gain resulting from said regimen in (**Para 0005**) where the difference is determined between before and after images. Posa discloses the difference and this is calculated based on the calculation and recalculation in the before and the after images. Posa further discloses determining the progress level of the person at intervals during the program in **para 0005** which is recalculating the body fat percentage.

Regarding Claim 72, Posa and Crampton disclose the method of claim 51. Posa disclose further comprising: adjusting said first image by independently adjusting (**providing a program to achieve a desired body shape (body**

**building), exercise program will adjust the muscle and body fat in Para 0005 and 0001)** at least one of a muscle layer and a fat layer. Posa disclose taking the difference by comparing with the initial body parameter to calculate the progress. Crampton discloses modifying points (head offset values) on the generic avatar model based on the image data obtained from the camera at col 37 lines 1-25 and also discloses texture rendering program Col 49 lines 56-67 corresponding to the legs and hands which have muscles.

Regarding Claim 73, See the explanation of claim 51 and Crampton also discloses calculating BMI which is an indication of relative Obesity (Fat ) of an individual and the vertices are moved (adjusted) based on the overweight individuals (**Col 49 lines 39-56 and Col 51 lines 67 through Col 52 lines 18**).

Regarding Claim 74, Posa and Crampton disclose the method of claim 73. Crampton disclose further wherein said adjusting (editing) is performed by moving a slider bar in a graphical user interface (**Figs 10-14 where the arrows with the slider bars are used to edit the images**).

Claims 68-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posa in view of Crampton and in further view of Abrams et al. (US 5673691) hereafter Abrams.

Regarding Claim 68, Posa and Crampton disclose the method of claim 51. Posa further disclose that his invention is an improvement in health related monitoring in para 0004. Posa and Crampton however do not expressly recite further comprising the step of estimating at least one health risk for said person in said pre-regimen condition.

Abrams disclose a method and apparatus that monitor weight loss program that reduce and control diabetes, stress, hypertension and other health conditions at (**Col 5 Lines 40-43**) which would comprise estimating at least one health risk for said person in said pre-regimen condition. Posa, Crampton and Abrams are combinable because they are from the same field of endeavor and are analogous art. The suggestion/motivation would be precision, flexibility and immediacy in weight monitoring and caloric adjustment by dynamically adjusting the weight and the behavior at (**Col 5 Lines 19-29**) as disclosed by Abrams. Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the teachings of Abrams of provide appropriate warnings and adjustments in the method and apparatus of Posa and Crampton for the above reasons.

Regarding Claim 69, see the explanation of Claim 68.

Regarding Claim 70, see the explanation of Claim 68.

Regarding Claim 71, see the explanation of Claim 68.

***Allowable Subject Matter***

Claims 54, 56, 60-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Other cited prior art***

The other cited prior art relevant to the applicants disclosure are (US 20040029684), (US 6336136) and NPL Body morph research by Tiffany et al. Feb 21 2000.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAYESH A. PATEL whose telephone number is (571)270-1227. The examiner can normally be reached on M-F 7.00am to 4.30 pm (5-4-9). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571-272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/25/2008  
/Jayesh A Patel/  
Examiner, Art Unit 2624

/Jingge Wu/  
Supervisory Patent Examiner, Art Unit 2624